

REDACTED FOR PUBLIC INSPECTION

David Cosson
ATTORNEY AT LAW

2154 Wisconsin Ave, N.W.
Washington, D.C. 20007

Telephone (202) 333-5275
Telecopier (202) 333-5274

April 16, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

By Electronic Filing

Re: Connect America Fund, WC Doc.
No. 10-90; A National Broadband Plan for
our Future, GN Doc. No. 09-51;
Establishing Just and Reasonable Rates for
Local Exchange Carriers, WC Doc. No. 07-
135; High-Cost Universal Service Support,
WC Doc. No. 05-337; Developing a Unified
Intercarrier Compensation Regime, CC Doc.
No. 01-92

Ex Parte Notice

Dear Ms. Dortch:

On April 12, 2012, Larry Sevier, Rhonda Goddard, Vincent Wiemer, and I, representing Rural Telephone Service Company, Inc. ("RTS"), met with Sharon Gillett, Carol Matthey, Steven Rosenberg, Katie King, Rodger Woock, James Eisner, Wesley Platt, and Gary Seigel of the Wireline Competition Bureau and Michael Steffen of the Office of the Chairman to discuss the impacts of the Commission's Universal Service/Intercarrier Compensation Order, FCC 11-161, on RTS and its subscribers.

The RTS representatives summarized the attached document including a summary of its provision of broadband service beginning in 1998 through its most recent deployment of broadband facilities pursuant to a grant and loan provided under the ARRA program. RTS has invested over [redacted] in broadband capable facilities since 1998 and has an outstanding indebtedness to the RUS of [redacted] million.

REDACTED FOR PUBLIC INSPECTION

The broadband facilities have been deployed to meet the demand of the residential and business customers and are constructed in full accordance with standards and requirements of the Rural Utilities Service. Over 70 percent of the homes and business passed by RTS's facilities subscribe to broadband. The broadband facilities connect all "anchor institutions" in the service area, including 36 libraries, which are provided with free broadband and Wi-Fi to provide all consumers, regardless of income the opportunity to use the Internet.¹

There has been an increased need for speed and reliability that fiber can provide as broadband needs are continually evolving. We have over [redacted] broadband customers today in our ILEC and CLEC who require higher than 4 Mbps, of which over 500 require 10 Mbps to 75 Mbps. We have lost very few of our business customers to wireless as businesses, schools, hospitals and medical clinics need the speed and reliability that fiber can provide. While wireless is a good complimentary service, many have told us they would not want to rely solely on wireless for their business needs. Of the residential access lines we have lost to wireless, most have kept their wired high speed broadband connection.

There is also rapid growth of wireless traffic volume, which relies heavily on RTS's fiber network. Many businesses in the area are able to remain where they are and provide jobs for residents solely because of the availability of RTS's broadband services. In contrast, a dairy in the study area of an adjoining large price cap ILEC was recently told it would not be provided broadband service, because the dairy was not close enough to town, and it would cost too much to take broadband that far out in the country.

Despite RTS's success in making broadband services available to residents, businesses, and anchor institutions in its low density area, and despite the fact that its loans were deemed feasible by RUS based on the predicted USF revenue stream, the effect of the reductions in revenue that will result from the Commission's November Order could cause RTS to be in default on its loans to RUS by 2015, and RUS has been so advised.

A particular area of concern with the November Order is the decision to reduce universal service support for companies such as RTS whose costs in various categories exceed the 90th percentile level in a model developed by the staff based on quantile regression analysis. RTS recognizes that models can be a useful tool for regulatory purposes, such as establishing the average schedules used by many rural companies.

The Commission's model, however, is seriously flawed, and its flaws are evident from the model itself. Among the benefits of using quantile regression analysis is that the results include direct measurement of how well the independent variables are correlated and how well the model predicts the desired outcomes. The Commission's model shows that many of the independent variables exhibit very little or no correlation and the predictions fail to explain 42 to 90 percent of the changes in costs.

¹ Library count includes libraries served by RTS' CLEC affiliate. All data on page 2 of the handout include CLEC data.

REDACTED FOR PUBLIC INSPECTION

A significant source of the poor results of the model is the absence of several significant independent variables. Among the needed variables are those describing terrain and loop length. In western Kansas, percent of water has little effect on cost, but the fact that the majority of roads are unpaved does.

Another source of failure in the model is that the assumptions as to which companies are comparable, i.e. "similarly situated," are invalid. Of the 46 companies between 7,000 and 10,000 access lines, RTS has close to the average number of lines, but its service area is more than 3.5 times larger. Also, as applied to RTS's service area, the Commission's analysis shows the number of census blocks in the area to be one and a half times the number of access lines. RTS does not have the exact number of census blocks for the area, but the Commission's analysis appears to be incorrect.

In addition to the flaws in construction of the model and the data used, the conception of how it is to be used is equally invalid. The Order wrongly establishes a presumption that costs above any of the benchmarks determined by the model are excessive. The model should be used as an indicator that inquiries as to the reasonableness of some or all of any particular company's costs may be needed, but it is wrong to presume that such costs are unreasonable. Further, costs RTS incurred were in compliance with specific federal government programs intended to provide specific services and the design and construction of the facilities was explicitly found to be in full compliance with the only existing federal technical standards established by RUS. It is wrong to now retroactively apply new rules that preclude recovery of investments already made.

Please contact me if there are any questions on this matter.

Sincerely yours,

David Cosson
Counsel to Rural Telephone Service Company

Attachments

Power Point Handout, Tower site map (PDF)

cc: Sharon Gillett
Carol Matthey
Steve Rosenberg
Katie King
Rodger Woock
James Eisner
Wesley Platt
Gary Seigel
Michael Steffen

REDACTED FOR PUBLIC INSPECTION